?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%Dated: 15.04.2019

Judgment reserved on : 08.03.2019
Judgment Pronounced on : 15.04.2019

*CORAM
THE HONOURABLE MRS .JUSTICE R.HEMALATHA

+S.A.No.(MD).2086 of 2003

#1.K.K.M.Mohammed Ibrahim
(Died)
2.Sabura Beevi
3.Mohammed Mohideen
4.Mohammed Niyaz
5.Mohammed Farook
6.Thahir
7.Abar Jahan
...Plaintiffs/Respondents/Appellants

(Appellants 3 to 7 are brought on record
as Lrs of the deceased 1st appellant
vide order, dated 28.02.2013)
(second appellant recorded as LR
of the deceased first appellant vide
order, dated 28.02.2013)
Vs.

$Mohammed Ali
...Defendant/Appellant/Respondent

PRAYER; Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment, dated 19.06.2003 made in A.S.No.14 of 2003, on the file of the District Judge, Pudukkottai, reversing the decree and judgment, dated 10.10.2002 made in O.S.No.141 of 2001, on the file of the Principal District Munsif, Pudukkottai.

!For Appellants : Mr.M.Ajmal Khan,
Senior Counsel
for Mr.A.S.Mujibur Rahman
^For Respondent : Mr.V.Ramakrishnan

:JUDGMENT

The appellants 1 & 2 are the plaintiffs in O.S.No.141 of 2001, on the file of the Principal District Munsif, Pudukkottai. During the pendency of

the present appeal the first appellant died and therefore his legal heirs were brought on record as appellants 3 to 7.

2.The appellants 1 and 2 filed the above suit for a permanent injunction restraining the respondent/defendant from interfering with their peaceful possession and enjoyment of the suit properties which are described under two schedules in the plaint. The first schedule contains two items. The first and second items in schedule~I are described as Natham house sites in S.F.No.180~7 and S.F.No.180~9 of Kulanthiranpattu Village, Alangudi Taluk, Pudukottai District. The second schedule is described as Natham house site in S.F.No.180/2B.

3.The case of the appellants in nutshell is as follows:~
The second plaintiff is the wife of the first plaintiff. The first item of the suit property was purchased by the first plaintiff-s father K.K.Mohamed Mydeen through a registered sale deed, dated 16.06.1941, a copy of which is marked as Ex.A1 and the western portion was sold in favour of the respondent-s/defendant-s mother Saithammal through a registered sale deed, dated 07.09.1978. A copy of the said sale deed is marked as Ex.A2. The second plaintiff entered into an agreement of sale dated 05.02.1974 (Ex.A12) with one Allapitchai Saibu for purchasing second item of the suit property and the said Allapitchai also executed a power of attorney dated 19.02.1974 (Ex.A8) in favour of the second plaintiff. The sale deed, dated 15.11.1955 in favour of Allapitchai and the parent documents are marked as Ex.A7, Ex.A5 and Ex.A6 respectively.

4.According to the appellants/plaintiffs the Special Tahsildar, Natham settlement of Gandarvakottai issued patta in the name of the plaintiffs after conducting enquiry and that the appeal and the subsequent revision preferred by the respondent/defendant were also dismissed. The orders passed by the District Revenue Officer is marked as Ex.A11. It is also contended by the appellants/plaintiffs that the respondent/defendant is attempting to interfere with their possession over the suit properties and one such attempt was made on 15.05.2001 for which a police complaint was lodged.

5.The suit was resisted by the respondent/defendant on the following grounds.
(i)The plaintiffs have title and possession only in respect of suit item No.1 and they have sold the entire properties including first item in favour of the respondent/defendant-s mother through a sale deed dated 07.09.1978 (Ex.A2).
(ii) However in Ex.A2 the boundary description is wrongly given.
(iii)The second item of the suit property was purchased by the grand~ mother of the defendant vide sale deed dated 12.08.1939 (a copy of which is marked as Ex.A4) and the defendant has been in continuous possession of the said property. Therefore, he prayed for dismissal of the suit.

6.The trial Court after framing necessary issues decreed the suit in favour of the plaintiffs vide its decree and judgment, dated 10.10.2002. Aggrieved over the same, the respondent/defendant preferred an appeal in A.S.No.14 of 2003 before the Principal District Judge, Pudukkottai. The

learned Principal District Judge, Pudukkottai after analysing the records allowed the appeal and dismissed the suit filed by the appellants/plaintiffs.

7.Now, the second appeal is filed on the following substantial questions of law.
?1.Whether the lower appellate court has failed to apply correct principles of law regarding grant of injunction in the suit?
2.Whether the lower appellate court is wrong in holding that the plaintiffs have failed to prove correlation of survey numbers though they have produced Exs.A~1, A~2 and A~9 to A~11?
3.Whether the lower appellate court has failed to consider the documents produced by the plaintiffs?
4.Whether the lower appellate court is justified in reversing the judgment of the trial court??

8.Mr.M.Ajmalkhan, learned Senior Counsel appearing for the appellants/plaintiffs would contend that when the respondent had admitted the title of the appellants 1 & 2 over the suit property, the first appellate court was wrong in dismissing the suit filed by the appellants. His another contention is that the respondent claims title to the suit first and second item through sale deeds dated 7.9.1978 (Ex.A2) and 12.08.1939 (Ex.A4) and also contends that the entire suit properties were sold in favour of second respondent-s mother. His specific contention is that when immediately on 7.9.1939 Varusaiammal, the plaintiff-s predecessor in title purchased second schedule of the suit properties vide a sale deed dated 7.9.1939 (Ex.A5) and subsequent alienation were made through Ex.A6 and Ex.A7 followed by a sale agreement (Ex.A12) in favour of the second plaintiff and the District Revenue Officer-s orders, dated 13.11.2000 (Ex.A11), the defendant cannot claim any right over the suit properties. His next contention is that in a suit for permanent injunction, if the plaintiffs are able to show their possession and title over the suit properties by adducing cogent evidence, the suit has to be decreed. Reliance was also placed on the decision in Anathula Sudhakar v. P.Buchi Reddy reported in AIR 2008 (SC) 2033 wherein it has been held that;~
?Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight forward, the court may decide upon the issue regarding title, even in a suit for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.?

9.He would further contend that a patta is a record of possession and though the entries in the Revenue Records are not conclusive proof, they are important documentary evidence in a case for permanent injunction based on possession. He relied on the decision in Viswa Vijay Bharathi vs. Fakhrul Hassan and others reported in (1976) 3 SCC 642 and contended that the Hon-ble Supreme Court has held that the entries in the revenue records should be accepted at their face value and that as far as the present case is concerned

the appellants are able to show their title and possession over the suit properties. He also contended that the first appellate court without analysing the evidence adduced on the side of the appellants 1 & 2 had dismissed the suit filed by them.

10.Per contra, Mr.V.Ramakrishnan, learned counsel appearing on behalf of the respondent would contend that the appellants 1 & 2 after having sold the suit second item in first schedule in favour of the respondent-s mother through a sale deed, dated 07.09.1978 (Ex.A2) cannot now contend that they have title to suit second item of first schedule. He would further contend that the second schedule was purchased by respondent-s grand~mother through a sale deed dated 07.09.1939 (Ex.A5) and therefore the respondent had cast a cloud on the appellants- title over the suit properties and that in such circumstances the plaintiffs suit for bare injunction without seeking for declaration of title to the suit properties cannot be maintained. Reliance was placed on the decisions in
(I) Srinivasa Pillai v. Ragunathan reported in 1983 (1) MLJ 159
(ii) Jharkhand State Housing Board v. Didar Singh and another reported in 2019 SAR (Civil 32)
(iii)Arasappan Karayalar and another v. Subramania Karayalar reported in 2001~1 L.W. 724.

11.He also pointed out that the description of the property in possession of the respondent is clearly indicated in the written statement with four boundaries and that the appellants 1 & 2 did not dispute that this particular property is not the property of the respondent.

12.Yet another contention of the learned counsel for the respondent is that the patta proceedings (Ex.A11) alone cannot be a guiding factor especially when the survey numbers in Ex.A1 and Ex.A2 differ and there is nothing to show on record to correlate these survey numbers with the suit survey numbers and that even as per the admissions made by the plaintiffs they are not in possession of the suit properties. He therefore, prayed for dismissal of the appeal.

13.At the outset it may be observed that the suit items I & II in the first schedule are described as S.F.No.180/7 measuring 0.03.25 hectares and S.F.No.180/9 0.00.27 hectares. The properties described in the sale deed dated 16.06.1946 (Ex.A1) is a Government land in S.No.180/4 of Kulanthiranpatti Village measuring 24 cents with two thatched houses and trees. But the appellants contend that they have title to the suit first schedule through Ex.A1. The appellants/plaintiffs did not adduce any acceptable evidence to show that the suit S.Nos.180/7 and 180/9 are the properties purchased by his father through Ex.A1. The Settlement Register is not filed by the appellants/plaintiffs. When the appellants/plaintiffs did not adduce sufficient evidence to show that what was purchased by the father of the first appellant falls in the Survey numbers, this court cannot come to a conclusion that the plaintiffs have valid title over the suit first schedule. Furthermore, the first plaintiff (P.W.1) had admitted in his evidence that he could not state as to when the survey numbers found in Ex.A1 were further sub~divided. He could not also state the survey number of his

house which according to him is on the eastern side of S.No.180/7. Furthermore, the first plaintiff as P.W.1 admitted that the respondent is in possession of suit second schedule.

14.A perusal of Ex.A2 shows that Saithammal (mother of the respondent) purchased 15 cents out of 42 cents in survey number 180/1. The appellants did not adduce any evidence to show that the remaining extent of land in S.No.180/1 was sub~divided as 180/2B and that they have been in possession and enjoyment of the suit properties. As rightly pointed out by the learned counsel for appearing for the respondent no evidence is adduced to correlate the survey numbers found in Ex.A1 and Ex.A2 with that of the suit survey numbers.

15.The trial Court mainly based on Ex.A9 had observed that survey numbers 180/1 and 180/2 are sub divided as 180/2B. Ex.A9 patta is issued by Special Tahsildar, Natham land scheme. It is not known as to how the new survey numbers are given in Ex.A9 . When the appellants/plaintiffs claim that the old survey numbers are further sub~divided, they should have called for Settlement Register. No steps were taken in this regard by the appellants/plaintiffs. No revenue officials have been examined. Merely based on Ex.A9 this Court cannot come to a conclusion that survey number 180/1, 180/2 are correlated with the suit survey numbers.

16.The first appellate court had analysed the entire evidence on record in proper perspective and dismissed the suit filed by the appellants/plaintiffs.

17.All the observations made by the first appellate Court are perfectly in order and I therefore, see no reason to interfere with the findings recorded by the first appellate court.

18.In the result,

(i)The appeal is dismissed. No costs.

(ii)The decree and judgment dated 19.06.2003 passed by the Principal District Judge, Pudukkottai is upheld.

(iii)The suit in O.S.No.141 of 2003 on the file of the Principal District Munsif, Pudukkottai is dismissed with costs.

To

1.The District Judge,
Pudukkottai.
2.The Principal District Munsif,
Pudukkottai.